

**COMMONWEALTH OF KENTUCKY**  
**BEFORE THE KENTUCKY STATE BOARD ON**  
**ELECTRIC GENERATION AND TRANSMISSION SITING**

**In the Matter of:**

<b>THE APPLICATION OF KENTUCKY</b>	)	
<b>PIONEER ENERGY, LLC FOR A</b>	)	
<b>CONSTRUCTION CERTIFICATE</b>	)	<b>CASE NO. 2002-00312</b>
<b>PURSUANT TO KRS 278.704(1) TO</b>	)	
<b>CONSTRUCT A MERCHANT</b>	)	
<b>ELECTRIC GENERATING FACILITY</b>	)	

**TESTIMONY OF**  
**MIKE MUSULIN, II**  
**PRESIDENT,**  
**KENTUCKY PIONEER ENERGY LLC**

**Filed: July 18, 2003**

1 **Q. Please state your name, position and business address.**

2 A. My name is Mike Musulin, II. I am the President of Kentucky Pioneer Energy LLC  
3 (“Kentucky Pioneer”). My business address is 312 Walnut Street, Suite 2650,  
4 Cincinnati, Ohio 45202.

5 **Q. Please briefly describe your professional background and education.**

6 A. I have spent my entire career in the energy industry including ten years as President of  
7 the Kentucky Coal Association, thirteen years in corporate management with two  
8 different coal companies, and three years as part-owner of a consulting firm with energy  
9 clients. I am a U.S. Air Force veteran having served as a Russian linguist. I hold  
10 bachelors and masters degrees from West Virginia University and currently am a  
11 doctoral candidate at the University of Kentucky.

12 **Q. Do you have the authority to represent Kentucky Pioneer Energy, LLC in this  
13 proceeding?**

14 A. Yes. I have complete and unqualified corporate authority to represent Kentucky Pioneer  
15 in this matter before the Kentucky State Board on Electric Generation and Transmission  
16 Siting (“Board”).

17 **Q. What is the purpose of your testimony?**

18 A. Following Kentucky Pioneer’s receipt of the Board’s Order of April 16, 2003, Kentucky  
19 Pioneer submitted a letter on May 7, 2003 affirming that it is in compliance with the  
20 requirements of KRS 278.710(1)(e), and requested a hearing to present evidence of such  
21 compliance. In response to Kentucky Pioneer’s request that the Board act on its letter of  
22 May 7, 2003, the Board issued an order scheduling this hearing to allow Kentucky  
23 Pioneer to demonstrate its compliance with local zoning regulations. The purpose of my

1 testimony is to present Kentucky Pioneer’s evidence of compliance with the local zoning  
2 requirements with the Winchester-Clark County Planning Commission (“Planning  
3 Commission”).

4 **Q. Please briefly describe Kentucky Pioneer’s project.**

5 A. Kentucky Pioneer proposes to construct and operate a 540 megawatt electric Integrated  
6 Gasification Combined Cycle (“IGCC”) generation station within a 300-acre parcel of  
7 land that it currently leases from East Kentucky Power Cooperative, Inc. (“EKPC”).  
8 This parcel is solely contained within a 3200-acre plot owned by EKPC at its J.K. Smith  
9 site in Trapp, Clark County, Kentucky. The J.K. Smith Site is located approximately 21  
10 miles southeast of Lexington, 8 miles southeast of Winchester, and 1 mile west of Trapp,  
11 Kentucky. The 300 acre lease site was disturbed by prior construction activities and has  
12 previously completed initial grading, primary foundations, fire protection piping and a  
13 rail spur access infrastructure. EKPC currently operates five natural gas combustion  
14 turbines at this location.

15 **Q. Please state the criteria set forth in KRS 278.710(1)(e).**

16 A. In May of 2002, the General Assembly enacted Senate Bill 257 (the “Siting Act”) to  
17 establish the Board and delegate to it certain express authority to regulate the siting and  
18 construction of electric generating and transmission facilities that are not regulated by the  
19 Kentucky Public Service Commission based upon ten statutorily defined criteria.

20 KRS 278.710(1)(e) requires the Board to consider the following criteria in  
21 determining whether to grant a construction certificate:

22 “[w]hether the proposed facility will meet all local planning and zoning  
23 requirements that existed on the date the application was filed.”

1 **Q. Will Kentucky Pioneer’s project, if constructed, comply with the local planning and**  
2 **zoning requirements of the Planning Commission that existed on December 19, 2002**  
3 **– the date on which the Board deemed Kentucky Pioneer’s Application to be**  
4 **administratively complete?**

5 A. Yes. Kentucky Pioneer unconditionally certifies without qualification that it will comply  
6 with all the local planning and zoning requirements of the Planning Commission that  
7 existed on December 19, 2002.

8 **Q. Please describe how Kentucky Pioneer expects its proposed project to comply with**  
9 **the Planning Commission’s requirements in effect as of December 19, 2002?**

10 A. A review of the Planning Commission’s “Revised Zoning Ordinance, City Winchester,  
11 and Revised Zoning Order, Clark County, Kentucky,” (“Zoning Order”) shows that the  
12 Planning Commission has established certain requirements as they relate to  
13 manufacturing, industrial and related uses which may potentially involve such nuisance  
14 factors as noise, air pollution, odor and vibration. They are found in the Heavy Industrial  
15 District (I-2) requirements. A copy is marked and attached to my testimony as Exhibit 1.

16 The record shows that Kentucky Pioneer’s proposed operation of the IGCC  
17 facility falls below the maximum permitted under the limits established in Article 6.16 of  
18 the Zoning Order for these potential nuisances.

19 Under the most restrictive standard in Article 6.16 of the Zoning Order, noise  
20 levels emitted from a Heavy Industrial use shall not exceed 60 dBA during the hours of  
21 7:00 a.m.-9:00 p.m. and 55 dBA during hours of 9:00 p.m.-7:00 a.m. Although the  
22 district surrounding the EKPC- Kentucky Pioneer area is zoned agricultural and no noise  
23 limits are established for agricultural use in the Zoning Order, the Final Environmental

1 Impact Statement (“FEIS”) concluded that the noise levels are expected to be 53.4 dBA  
2 at the closest structure outside the EKPC area and 44.7 dBA in the community of Trapp.

3 Article 6.16 of the Zoning Order also establishes a minimum of 300 feet as the set  
4 back from adjoining property. The record shows that Kentucky Pioneer’s IGCC facility  
5 is set back one mile from the nearest public road and 2500 feet from the nearest point of  
6 J.K. Smith’s property boundary.

7 Kentucky Pioneer’s activities will not violate the accessory uses permitted under  
8 Article 6.16 or exceed the air pollutants guidelines set up by the Cabinet for Natural  
9 Resources and Environmental Protection.

10 Thus, in Kentucky Pioneer’s view, its proposed operation of the IGCC facility  
11 meets or exceeds the applicable standards established by the Planning Commission.

12 **Q. Has Kentucky Pioneer applied with the Planning Commission for a change in the**  
13 **use of the property?**

14 A. Following the receipt of the April 16, 2003 Order from the Board, representatives from  
15 Kentucky Pioneer, including myself, met with Mr. Robert G. Blanton, Planning Director,  
16 for the Planning Commission. At that meeting, Mr. Blanton advised Kentucky Pioneer  
17 that it would need to submit an application for an amendment to the zoning map. Since  
18 then, Mr. Blanton has confirmed the position of the Planning Commission in its letter of  
19 June 4, 2003, which is a matter of record in this proceeding. The Planning Commission  
20 in the same letter has also advised of its position that any further ruling by the Board in  
21 this proceeding will not effect any determination by the Planning Commission on  
22 Kentucky Pioneer’s compliance with the Zoning Order.

1           If the Board proceeds to issue Kentucky Pioneer the requested construction  
2 certificate for the proposed facility, Kentucky Pioneer commits to resume its discussions  
3 with the Planning Commission on how to best achieve Kentucky Pioneer’s compliance  
4 with this issue and take any steps which are necessary to achieve a mutually satisfactory  
5 solution. In doing so, Kentucky Pioneer will satisfy the requirement in KRS  
6 278.710(1)(e) because it “will meet all local planning and zoning requirements that  
7 existed on the date the application was filed.”

8           Kentucky Pioneer respectfully submits, however, that the Planning Commission  
9 and not the Board should determine whether the proposed use of property at the J.K.  
10 Smith site requires a change in the zoning map. If the Planning Commission has advised  
11 that such a change is required, Kentucky Pioneer is committed to discussing the matter  
12 further with the Planning Commission and taking such steps as are necessary to fulfill the  
13 zoning requirements.

14 **Q. What is your recommendation to the Board?**

15 A. Kentucky Pioneer requests the Board issue the construction certificate requested in its  
16 Application.

17           Kentucky Pioneer submits that the evidence satisfies all the criteria set forth in  
18 KRS 278.710(1)(a) through (g). Kentucky Pioneer has complied and will continue to  
19 comply with all applicable permitting regulatory requirements necessary for the  
20 construction and operation of the proposed facility, including all planning and zoning  
21 requirements that existed on the date the Application was filed. Kentucky Pioneer is  
22 committed to implementing the mitigating factors identified in the FEIS issued

1 November 2002 by the United States Department of Energy and the February 6, 2003  
2 report by Jason and Associates Corporation.

3 The Siting Act allows applicants, such as Kentucky Pioneer, to first proceed and  
4 obtain the construction certificate and then obtain the other regulatory permits necessary  
5 for the construction and operation of electric generating facilities. Kentucky Pioneer  
6 requests the Siting Board to issue the construction certificate so that it may proceed to  
7 obtain the other regulatory permits necessary for the construction and operation of its  
8 proposed facility, including approval of the Zoning Commission.

9 **Q. Does this conclude your testimony?**

10 A. Yes.

**VERIFICATION**

**COMMONWEALTH OF KENTUCKY** )  
 ) **SS:**  
**COUNTY OF FAYETTE** )

The undersigned, **Mike Musulin, II**, being duly sworn, deposes and says he is the President of Kentucky Pioneer Energy LLC, that he has personal knowledge of the matters set forth in the foregoing testimony, and the answers contained therein are true and correct to the best of his information, knowledge and belief.

\_\_\_\_\_  
**MIKE MUSULIN, II**

Subscribed and sworn to before me, a Notary Public in and before said County and State,  
this \_\_\_\_ day of \_\_\_\_\_ 2003.

\_\_\_\_\_(SEAL)  
Notary Public

My Commission Expires:  
\_\_\_\_\_



## Exhibit 1

### 6.16 Heavy Industrial District (I-2)

The intent of this **district** is to provide manufacturing, **industrial** and related uses which may potentially involve nuisance factors such as noise, air pollution, odor, vibration.

#### 6.161 Noise Level Requirements

Noise levels emitted from any activities or operations within this **district** shall not at any receiving real property exceed:

TABLE INSET:

Receiving Land Use	7:00 a.m.--9:00 p.m.	9:00 p.m.--7:00 a.m.
Residential	60dB(a)	55dB(a)
Commercial	65dB(a)	65dB(a)
<b>Industrial</b>	70dB(a)	70dB(a)

as measured with a sound level meter conforming to ANSI type II specifications or better.

Air pollutant levels emitted from the activities operation shall not exceed the guidelines set up by the Department of Natural Resources Environmental Protection.

(Ord. No. 20-82, § 2, 9-28-82)

#### 6.161 Principal Uses Permitted

Any use permitted in the I-1 zone provided that all provisions outlined herein shall apply.

Manufacturing or **industrial** uses provided that any building or outside storage, loading or working areas except accessory parking areas shall be located at least three hundred (300) feet from any residential land use and one hundred (100) feet from any other use except I-1.

Manufacturing including but not limited to foundries, brick kilns, curing and tanning, glue manufacturers, fertilizer manufacturers, stockyard, slaughterhouses, rendering plants, junk or wrecking material yards, gasoline storage areas, refuse dumps, sanitary landfill areas, or automobile racetracks. The manufacturer and/or sale of rock, sand or gravel when a principal use.

Contractor's equipment storage yard or plant.

Billboards and advertising signs.

(Ord. No. 20-82, § 2, 9-28-82)

#### 6.163 Accessory Uses Permitted

Parking lots and structures.

Garage or other building not used as a dwelling and accessory to the principal use.

Outside storage of goods incidental to the principal use provided that the storage is enclosed on all sides by a solid wall or fence at least six (6) feet in height or an alternative method of screening subject to the review by and approval of the Board of Adjustments. (Ord. No. 20-82, § 2, 9-28-82)

6.164 Dimension and Area Requirements

None, except as provided in Articles 9.2 and 9.8. (Ord. No. 20-82, § 2, 9-28-82)

6.165 Parking Requirements

Parking requirements may be found in Article 10 of this Zoning Order. (Ord. No. 20-82, § 2, 9-2-82)

6.166 Sign Requirements

Sign requirements may be found in Article 11 of this Zoning Order.  
(Ord. No. 20-82, § 2, 9-28-82)